

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6357 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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SURESH AGARWAL

VERSUS

UNION OF INDIA & ORS.

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Appearance:

Mr.S. Tripathy for the petitioner

None present for the respondents

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Coram: S.K. Keshote,J

Date of decision:9.5.97

C.A.V. JUDGMENT

On 2nd April 1997, the matter was called out for

hearing in the first round, then in the second round and lastly in the third round, but none put appearance for respondents. Heard learned counsel for the petitioner and perused the Special Civil Application.

2. The petitioner, a constituted Power of Attorney holder of the Ajmer Construction Company, a registered partnership firm carrying on the business of engineers, contractors and builders, filed this Special Civil Application and challenge has been made to the order of the authority under the Minimum Wages Act, 1948 and Regional Labour Commissioner (C), Ajmer, dated 13th September 1983 and the order dated 14th March 1984, made in Claim Application No.MWA 172/83.

3. On inspection made of the establishment of the firm at Kutch-Bhuj, it has been found by the Assistant Labour Commissioner (C), Adipur, Gujarat that the firm made the payment, to its workmen, of the wages less than the minimum wages prescribed by the Government of India. The firm was carrying on the construction work of M.E.S. Department at Kutch-Bhuj. The claim has been filed by the Assistant Labour Commissioner (C), Adipur, Gujarat for difference of wages payable under the Minimum Wages Act, 1948 and the wages actually paid for the period from 10.10.82 to 18.6.83, amounting to Rs.4,821.60 and the compensation amount of Rs.48,216.00. Under the impugned order, the claim application filed by the Assistant Labour Commissioner (C), Adipur, Gujarat was accepted and the order made for the payment of difference of wages amounting to Rs.4,821.60 and compensation amounting to Rs.33,751.20 against the firm.

4. The petitioner, Shri Suresh Agarwal filed an application before the authority for setting aside of the order dated 13th September 1983 on the ground that it has been made exparte. This application came to be dismissed by the authority under its order dated 14th March 1984. This order is also challenged by the petitioner in this Special Civil Application. The application filed by Shri Suresh Agarwal was dismissed by the authority only on the ground that he was not competent to file the said application. The incompetence of Shri Suresh Agarwal in filing the application was found on the ground that the power of attorney which has been executed in his favour by the partners of the firm empowers him only to execute or to do all or any of the acts, things in connection with the construction of "Provisions of Deficient Accommodation for single airmen at Bhuj". It has further been held that the power of attorney no more empowers him to file an application on behalf of the firm in the

matter connecting with labour laws and Minimum Wages etc. The reason which has been given by the authority to reject the application filed by Shri Suresh Agarwal for setting aside the order dated 13th September 1983 is not sustainable.

5. The learned counsel for the petitioner contended that Shri Suresh Agarwal was one of the partners of the firm M/s.Ajmer Construction Company, but I do not find any such thing on record. Not only this, it is also not the case of Shri Suresh Agarwal that he was the partner of the firm. The certificate of registration of the firm has been produced on the record. The entry in the register maintained in the office of the Registrar of firms, Rajasthan, Jaipur, under Section 67 of the Partnership Act, 1932 has not been produced on record to show and establish that Shri Suresh Agarwal was one of the partners of the firm. From the Special Power of Attorney, it is also borne out that Shri Suresh Agarwal was not the partner of the firm. In view of this fact, this contention of the learned counsel for the petitioner is not tenable.

6. The application filed by the Assistant Labour Commissioner (Central) Adipur, Kutch, impleaded two persons as a party, namely, Shri Dinesh Agarwal, managing partner and Shri Suresh Agarwal, partner of the firm. As stated earlier, Shri Suresh Agarwal was not the partner but it is a fact that he was one of the party opponent to the claim application filed by the Assistant Labour Commissioner (Central), Adipur, Kutch before the said authority. So, Shri Suresh Agarwal was not a stranger to the proceedings but he was one of the party to the proceedings. The order has been passed by the authority against the opponent to pay the difference of wages and the amount of compensation. The application for setting aside of that order has been filed by Shri Suresh Agarwal though may be as holder of power of attorney, but the authority has not considered that he himself was one of the party to the proceedings in which the order prayed for setting aside thereof has been made. The party to the proceedings has all the right to file the applications, appeals, review, revisions etc. or whatsoever other remedy available and the authority, in the present case, has committed error by considering the status of Shri Suresh Agarwal to be only of power of attorney. In view of this fact, the ground given by the authority for rejecting the application filed by Shri Suresh Agarwal for setting aside the order dated 13th September 1983 cannot be allowed to stand.

7. In the result, this Special Civil Application succeeds in part. The order dated 14th March 1984, annexure 'M' of the authority under the Minimum Wages Act, 1948 and Regional Labour Commissioner (Central) Ajmer, in case No.MWA 172/83 is set aside and the matter is remitted back to the said authority to decide the application filed by the petitioner for setting aside of the order dated 13th September 1983 on merits and in accordance with law.

8. While admitting this petition, this Court, on 26.12.84, made the order as under:

Notice returnable on 2.1.85. In the meanwhile the petitioner has agreed to deposit Rs.15,000/out of the amount of penalty determined by the impugned order. We will take this matter for admission after such deposit is made on 2.1.85. The deposit may be made in this Court.

Leave granted to amend by adding the parties who are benefited by the Award impugned.

9. In pursuance of this order, the petitioner deposited Rs.15,000/- in this Court. The office is directed to remit the amount of Rs.15,000/- in the name of the "Authority under Minimum Wages Act, 1948 & Regional Labour Commissioner (C), Ajmer, Rajasthan". This amount shall remain deposited with the said authority till the matter is decided by it finally. In case ultimately no liability of the firm whatsoever is found, then in that eventuality this amount has to be refunded to the petitioner, otherwise it has to be adjusted towards the liability of the firm. Rule is made absolute in aforesaid terms with no order as to costs.

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